



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 13, 1997

Mr. Wesley M. Hays
Superintendent
Rotan Independent School District
102 North McKinley Avenue
Rotan, Texas 79546

OR97-0346

Dear Mr. Hays:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 103763.

The Rotan Independent School District (the "district") received an open records request for information relating to the selection of a new superintendent of schools. The requestor specifically seeks "information that would demonstrate how those selected for interview were more qualified to be interviewed," and "the names and addresses of individuals fifty-five and older who were selected for interview." You contend the requested information comes under the protection of section 552.124 of the Government Code, as recently enacted by the Texas legislature in Senate Bill 1.¹ See Act of May 30, 1995, 74th Leg., R.S., ch. 260, § 31, 1995 Tex. Sess. Law Serv. 2486 (Vernon). You also assert that chapter 552 of the Government Code does not require a governmental body to create new information. We have considered your arguments and reviewed the sample documents submitted.²

¹The 74th legislature also enacted two other exceptions as "section 552.124." See Act of April 21, 1995, 74th Leg., R.S., ch. 76, § 5.02, 1995 Tex. Sess. Law Serv. 470 (Vernon); Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 11, 1995 Tex. Sess. Law Serv. 5133 (Vernon) ("Records of Library or Library System"); Act of May 9, 1995, 74th Leg., R.S., ch. 219, § 14, 1995 Tex. Sess. Law Serv. 1969 (Vernon) ("Certain Audits").

²In reaching our conclusion here, we assume that the "representative samples" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we agree with your assertion that a governmental body is not required to prepare new information in response to a request for information. Open Records Decision Nos. 605 (1992), 572 (1990), 416 (1984). However, a governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990) at 8. If the district holds information from which the requested information can be obtained, the district must provide that information to the requestor unless it is otherwise excepted from disclosure.

With regard to the applicability of section 552.124 to the records at issue, this section provides:

The name of an applicant for the position of superintendent of a public school district is excepted from [required public disclosure], except that the board of trustees must give public notice of the name or names of the finalists being considered for the position at least 21 days before the date of the meeting at which a final action or vote is to be taken on the employment of the person.

We note the similarity between section 552.124 and section 552.123 of the Government Code, which excepts from required public disclosure the "*name* of an applicant for the position of chief executive officer of an institution of higher education." (Emphasis added.) In determining the extent to which the statutory predecessor of section 552.123 protected the identity of applicants, this office concluded in Open Records Decision No. 540 (1990) as follows:

A name is by common usage often commonly considered the substantial equivalent of identity. Presley v. Wilson, 125 S.W.2d 654 (Tex. Civ. App.--Dallas 1939, writ dismissed, judgment corrected). Names are merely descriptive of persons for identification, but it is the identity which is the essential thing. Interpreting names and identities synonymously comports with prior attorney general opinions addressing the privacy of names of individuals in certain protected categories of persons and holding that protection from disclosure extends not only to the names of individuals *but also to any information tending to identify the individual*. See, e.g., Attorney General Opinion JM-36 (1983); Open Records Decision Nos. 477 (1987), 165 (1977) (relating to the identities of students); 339 (1982) (victims of sexual abuse or rape); 515 (1988) (informers covered by the informer's privilege). Examples of information identifying individuals might include, but is not limited to, *resumes, professional qualifications, membership in professional organizations, dates of birth, current positions, publications, letters of recommendation, or any other information that can be uniquely associated with a particular applicant*. (Emphasis added.)

We believe that the rationale outlined in Open Records Decision No. 540 (1990) is equally applicable here. Accordingly, we conclude the district may withhold pursuant to section 552.124 all of the requested information with regard to those individuals who were not "finalists being

considered for the position."

On the other hand, you inform us that the district has provided the requestor with the names of the four finalists for the superintendent position. You also state that "the only information which currently exists in the possession of (the district) which would, arguably, 'demonstrate how those selected for interview were more qualified to be interviewed,' would be the application packages submitted to the Board of Trustees." Our review of the sample application submitted to this office indicates that it contains various documents relating to the applicant's education and prior work experience, as well as letters of recommendation. Previously, this office has concluded that common-law privacy does not protect information about the educational training of an applicant or employee; names and addresses of former employers; dates of employment, kind of work, salary, and reasons for leaving; names, occupations, addresses and telephone numbers of character references; and information about job performance. *See* Open Records Decision No. 455 (1987). Moreover, there is a legitimate public interest in the job performance of public employees. We therefore conclude that the district must release the information contained in the "application packages" submitted to the Board of Trustees by the four finalists for the superintendent position, with the following exceptions.

First, the district must withhold any college transcripts of the finalist who accepted the superintendent position and who is now a district employee, other than information in the transcript detailing the degree obtained and the curriculum pursued. *See* Government Code Section 552.102(b). We have marked information in one of the submitted transcripts as an example. (See green tag). Next, section 552.117(1) of the Government Code requires that the district withhold its employees' and former employees' home addresses, telephone numbers, and social security numbers, and information that reveals whether the employee or former employee has family members, but only to the extent that the employees and former employees have elected to keep this information confidential in compliance with section 552.024. *See* Open Records Decision No. 530 (1989) (employee must make election prior to receipt of open records request). Section 552.117(1) does not protect the names, home addresses, and telephone numbers of any other class of individuals. *See, e.g.,* Open Records Decision No. 455 (1987) (home addresses and telephone numbers of job applicants not protected under section 552.117). Therefore, if any finalist for the superintendent position was an employee or former employee of the district, and had made an election under section 552.024 prior to your receipt of this request for information, then the district must withhold the type of information elected to be withheld.

Finally, we also note that in the last legislative session, Senate Bill 1 was enacted which added section 21.355 to the Education Code. Section 21.355 provides, "[a]ny document evaluating the performance of a teacher or administrator is confidential." This office recently interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). We enclose a copy of Open Records Decision No. 643 (1996) for your information. In that opinion, this office also concluded that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* Similarly, an administrator is someone who is required

to hold and does hold a certificate required under chapter 21 of the Education Code and is administering at the time of his or her evaluation. *Id.* Thus, to the extent the "application packages" relating to the four finalists contain teacher or administrator evaluations, these evaluations are excepted from disclosure under section 552.101 in conjunction with 21.355 of the Education Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 103763

Enclosures: Marked documents
Open Records Decision No. 643

cc: Mr. Richard Risener
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(w/o enclosures)